Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037

O +1 202 457 6000
F +1 202 457 6315
squirepattonboggs.com

Monica S. Desai
T +1 202 457 7535
Monica.desai@squirepb.com

August 17, 2015

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Notice of Ex Parte – MB Docket No. 14-261**
YipTV

Dear Ms. Dortch:

On August 13, Michael Tribolet (CEO, Chairman, and Founder of YipTV), Charles Gaspari (Founder and Chief Legal Officer, YipTV), Mahta Mahdavi (Vice President and Deputy General Counsel, YipTV), and Monica Desai (Counsel to YipTV), met with the following staff of the Federal Communications Commission (FCC or Commission): Matthew Berry (Chief of Staff, Office of Commissioner Pai), Robin Colwell (Chief of Staff, Office of Commissioner O'Rielly), Valery Galasso (Policy Advisor, Office of Commissioner Rosenworcel), Chanelle Hardy (Chief of Staff, Office of Commissioner Clyburn), and the following staff of the Media Bureau: Nancy Murphy (Associate Bureau Chief), Mary Beth Murphy (Chief, Policy Division), Steven Brockaert (Senior Deputy Chief, Policy Division), Brendan Murray (Assistant Division Chief, Policy Division), Lyle Elder (Attorney Advisor, Policy Division), and Raphael Sznajder (Honors Attorney, Policy Division). In addition, Alison Neplokh (Deputy Chief Technologist, Office of Strategic Planning) joined the meeting with Media Bureau staff.

YipTV discussed the Notice of Proposed Rulemaking (NPRM) in the above-captioned docket, which proposes to classify certain online video distributors (OVDs) that offer subscription-based linear programming, like YipTV, as multichannel video programming distributors (MVPDs).[1] YipTV emphasized that, unless classification is optional, or the Commission exempts OVDs or waives the FCC's MVPD obligations for YipTV and other similarly situated OVDs, the burdens of such a classification would far

[1] *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261, Notice of Proposed Rulemaking, 29 FCC Rcd 15995 (2014) (*MVPD Definition NPRM*).

outweigh any potential benefits.[2]

YipTV requests that, prior to moving forward with any reclassification, the Commission seek further comment on aspects that present particularly substantial technical challenges for OVDs, and that it complete its review of the retransmission consent negotiation rules and conduct a similar review of its program access rules prior to moving forward, if it chooses to move forward at all. Without such relief and additional consideration, the Commission endangers the very competition and consumer choice that the Commission is intending to support by this proposed change. YipTV expressed support for the Commission's reclassification proposal, provided that: (a) an individual OVD, like YipTV, has the option to elect MVPD status, or (b) by exemption or waiver, the attendant FCC-imposed obligations connected to such status do not apply, or (c) at the very least, legacy obligations imposed by the FCC on MVPDs are phased-in over a reasonable period of time (*i.e.,* not less than three years from the effective date of the change in the definition).

YipTV streams live international television programming over the Internet to its customers. The company is brand new – YipTV's service was just formally launched on May 7th of this year, and the company currently offers over 70 international linear TV channels. Some of YipTV's current primary offerings to US-based customers are Spanish-language and Latin American sports and news, in addition to a wide variety of popular entertainment and educational programming available in those regions. YipTV does not require a long-term contract – customers are able to pay for the service on a month-by-month basis. Additionally, YipTV strives to provide content to those customers who have not had access to content in the past because it is cost prohibitive.

YipTV agrees that online distributors of video programming "offer a tangible opportunity to bring customers substantial benefits" such as "more programming choices, viewing flexibility, technological innovation and lower prices."[3] Indeed, YipTV embodies that opportunity. Allowing emerging services such as YipTV to flourish will magnify those important benefits, expand viewing options, help to drive down the cost of video services for consumers, and provide access to customers who do not have access to content through traditional means.

YipTV is already subject to the Commission's existing requirements applicable to Internet-based distributors of video programming. There would be little to no benefit from classifying a company such as YipTV as a MVPD since YipTV currently does not rely on any US broadcast content or MVPD-affiliated offerings. Even if YipTV moved to a model that included such content, it is not clear that such a reclassification would be beneficial. Simply put, the program access rules do not afford YipTV sufficient benefit to counterbalance the associated legacy FCC obligations associated with MVPD status. For

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[2] *See* YipTV Notice of Ex Parte, *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, MB Docket No. 14-261 (Aug. 10, 2015).

[3] *Comcast Corporation, General Electric Company and NBC Universal, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4268-69, ¶ 78 (2011) (*Comcast/NBCU Order*); *MVPD Definition NPRM* fn. 106.

YipTV, reclassification as an MVPD will bring substantial costs that may limit its ability to obtain new programming – thus reducing the programming choices available to consumers – and likely increasing the end-cost of its service.

A. The Commission should seek further comment on unresolved questions in this proceeding and related proceedings before it moves forward with any reclassification.

The legacy MVPD obligations imposed by the FCC were not designed with online video distribution in mind, and may need to be waived, restructured or re-written for Internet-based video distributors. YipTV urged that it would be appropriate to seek further comment on legacy MVPD obligations that may, in particular, present significant technical challenges for OVDs. Additionally, YipTV asks that prior to any MVPD redefinition, the Commission resolve its review of the "good faith" negotiation standards for retransmission consent, and conduct a review of its program access rules as requested by Commissioner Clyburn.

With regard to closed captioning, YipTV encourages the Commission to seek further comment on the feasibility of captioning linear programming that is broadcast without captions and streamed live. As explained in its meetings, YipTV live streams linear programming channels that are, almost exclusively, broadcast without captioning. These channels are streamed from foreign countries, many of which do not regulate or require captioning for content. For channels that are broadcast with captioning, YipTV does pass through those captions. But it would be cost prohibitive for YipTV to continue streaming 70+ channels originating from countries outside of the United States that are not broadcast with captioning if YipTV were required to now be responsible for captioning that programming. YipTV spent three years designing and building its system, and invested significant resources into ensuring that it could comply with the FCC rules in place, including passing through captioning. However, it did not design its system to create original captions for live broadcasts where the content was not already otherwise broadcast with captions.

While the NPRM seeks comment on how to tailor the Commission's captioning rules to OVDs, it is critical that the Commission develop a record regarding the captioning tools and capabilities available to OVDs – including those cases where the programming is not delivered to the OVD with captions and where it has never been broadcast with captions.[4] As the Commission has recognized, captioning may present "technical challenges" for Internet-based distributors that require "advancements in technology . . . [to]

[4] *MVPD Definition NPRM* ¶ 54 (The Commission asks, for example, whether OVDs will be subject to "Section 79.1 or 79.4 of the Commission's rules, or will the Commission need to develop another set of requirements tailored to these services? Will we need to amend our closed captioning rules if we adopt the Linear Programming Interpretation, and if so, how?").

ameliorate."[5] These challenges are magnified for a provider such as YipTV that delivers foreign-language content streamed live from numerous countries as the channels are being broadcast without captioning.

Questions to explore in such an inquiry would include, for example: Is instant, quality captioning of live-streamed programming transmitted without captions technically feasible for OVDs? Is it technically feasible if the content is in a foreign language? What are the costs associated with captioning such programming? Do the benefits outweigh the costs? Should the cost-benefit analysis be impacted by the nature of the target audience, which in the case of YipTV is primarily an underserved population of people who do not have access to content because of the cost, and may not otherwise be able to obtain programming from their home countries? Should the Commission exempt certain entities from its captioning requirements or waive those requirements for certain entities? Should the Commission phase-in, for OVDs, any particular legacy FCC requirements designed for MVPDs? If so, what is the appropriate timing for such a phase-in? Is it appropriate for an OVD to be responsible for such captioning, when the meaning of the same Spanish-language dialogue could vary depending on the country of origin?[6]

YipTV also advocates that the Commission seek further comment regarding how the accessibility of emergency information rules would apply in the context of a mobile, IP-based video distribution platform. As the Commission is aware, there are inherent challenges in identifying the target audience for that emergency information in the context of IP-delivered video, particularly if users are viewing that video on mobile devices. Indeed, the Commission previously declined to extend the accessibility of emergency information rules to IP-delivered video programming, finding that "delivering emergency information via IP raises issues with regard to timeliness and geographic relevance of the information" and, accordingly, applying those rules to IP-delivered video "may not serve a useful purpose for and may cause confusion to viewers in areas with no connection to the location of the emergency."[7]

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[5] *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010* et al., MB Docket No. 11-154, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 14-97, ¶ 34 (July 14, 2014), *available* here.

[6] *See* Clare Mar Molinero, *The Spanish-speaking World: A Practical Introduction to Sociolinguistic Issues*, 48 (1997) ("[I]n fact there is a huge diversity of Latin American dialects, all of which vary appreciably from the standard Spanish of Spain."); John M. Lipski, *Castile and the hydra: the diversification of Spanish in Latin America*, The Pennsylvania State University (2010) ("Five hundred years ago, a rather homogeneous variety of Spanish spoken by a few thousand settlers was scattered across two continents . . . the regional and social variation which characterizes modern Latin American Spanish [is remarkable.]"), *available* here.

[7] *Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of*

Questions for the Commission to explore, then, may include: Is it feasible to accurately identify a target audience for emergency broadcast notifications when delivering content via internet protocol, as contemplated by the rules?[8] Is there a difference in answering this question when the content is live streaming of broadcast programming originating from a foreign country while being viewed by customers in the United States? Is there a risk of consumer confusion if the Commission requires OVDs to comply with the emergency information rules? What challenges are raised when users view OVD services on a mobile device while travelling outside the market where they are registered for the service? What other unique technical challenges do OVDs face in making emergency information accessible? Are the rules potentially duplicative if users are already receiving Emergency Alert System alerts on their mobile devices?

We also propose that the Commission consider delaying its reclassification decision until it resolves its review of the "good faith" negotiations process for retransmission of broadcast TV signals.[9] Firmly defining the obligations to which OVDs will be subject prior to any reclassification will reduce duplicative compliance costs and allow OVDs to devote more resources to innovating and expanding programming options to the benefit of consumers.

Finally, YipTV strongly supports Commissioner Clyburn's statements calling for the Commission to "reevaluate [the] program access rules, and to examine barriers to program carriage and distribution[.]"[10] As a new entrant in the video marketplace, YipTV understands the competitive challenges faced by smaller providers, and supports the Commissioner's call for the FCC to conduct a proceeding "to identify whether there are ways to reform our rules to provide a level playing field to enable smaller operators to remain competitive in the market."[11] Such a review should be completed before moving forward with reclassification.

B. If the Commission does not make MVPD status optional, it should exempt or waive the legacy FCC MVPD obligations or, at a minimum, provide for at least a three-year phase-in of those obligations.

YipTV urges the FCC to consider granting OVDs an exemption or waiver from

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2010, MB Docket No. 12-107, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-45, ¶ 8, fn. 28 (Apr. 9, 2013), *available* here.

[8] *See* 47 C.F.R § 79.2(b)(2) (this rule applies to "emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.").

[9] *See* Tom Wheeler, FCC Chairman, *Upgrading the Media Rules to Better Serve Consumers in Today's Video Marketplace*, Official FCC Blog (Aug. 12, 2015), *available* here.

[10] *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, FCC 15-94, Statement of Commissioner Mignon L. Clyburn at 1 (July 28, 2015), *available* here.

[11] *Id.* at 2.

legacy FCC rules imposed on MVPDs.[12] At a minimum, the Commission should provide for a multi-year phase-in of the MVPD obligations. There is ample Commission precedent for such an approach.

For example, the Commission allowed three years for captioning of video clips of live and near-live programming – emphasizing that a delayed deadline was appropriate considering the "technical challenges" of captioning video clips and the need for "advancements in technology . . . [that] may substantially ameliorate these challenges."[13] And, the Commission concluded that a gradual phase-in was appropriate for its rules requiring closed captioning of IP-delivered programming.[14] There, the Commission stated that it "[did] not believe it [was] reasonable" to require covered entities to come into immediate compliance while still developing the "processes or methods" necessary to provide the captioning required.[15]

The Commission has stated that a multi-year phase-in period is "consistent with the Commission's approach" in "complex rulemakings."[16] For example, the Commission established multi-year deadlines for full compliance with requirements for closed captioning of digital televisions, v-chip implementation, captioning of "uncaptioned, archival IP-delivered content" later shown on television with captions, the Part 14 accessibility rules for advanced communications services, and other rules.[17] The Commission could similarly

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[12] Such FCC-imposed obligations include, for example, requirements related to closed captioning (47 C.F.R. § 79.1) and accessibility of emergency information (47 C.F.R. §§ 79.2, 79.105).

[13] *See Closed Captioning of Internet-Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Second Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 14-97, ¶¶ 2, 34 (rel. July 14, 2014) (Order released July 14, 2014 required that "video clips of live and near-live programming" be captioned by July 1, 2017), *available* here.

[14] *Closed Captioning of Internet-Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, MB Docket No. 11-154, Report and Order, FCC 12-9, ¶ 51 (Jan. 13, 2012) (*2012 IP-Video Captioning Order*), *available* here.

[15] *2012 IP-Video Captioning Order* ¶ 51 fn. 218.

[16] *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010* et al., CG Docket No. 10-213, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151, ¶ 110 (Oct. 7, 2011) (*ACS Accessibility Order*), *available* here; *see also* 47 C.F.R. § 14.4.

[17] *See Closed Captioning Requirements for Digital Television Receivers* et al., ET Docket No. 99-254 *et al.*, Report and Order, FCC 00-259, ¶ 5 (rel. July 31, 2000) (Order released by the FCC July 31, 2000 required manufacturers to "begin to include DTV closed caption functionality in DTV devices . . . by July 1, 2002"), *available* here; *Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, ET Docket No. 97-206, Report and Order, FCC 98-36, ¶ 23 (rel. Mar. 13, 1998) (Order released by the FCC March 13, 1998 required television manufacturers to introduce v-chip technology in all models by January 1, 2000),

apply a multi-year phase-in approach for the requirement that OVDs be subject to MVPD obligations.

An exemption, waiver, or at least a reasonable multi-year phase-in of the legacy FCC requirements imposed on MVPDs is particularly important for entities such as YipTV. In creating and developing its business model and technology, YipTV relied heavily on existing regulations to ensure compliance with federal, state and local laws. A sudden change in regulations would force YipTV to redirect time and resources to change its business model and technology rather than provide affordable content to an underserved population. Therefore, absent an exemption or a multi-year phase-in, reclassification as an MVPD would result in an unreasonable burden of YipTV having to redesign and/or reconfigure content delivery systems and applications in order to comply with the FCC requirements related to MVPD status. Exempting OVDs or, at least, affording them a reasonable number of years to address these complex requirements will ensure that consumers will be able to continue to benefit from the competitive services provided by OVDs rather than "patch[ed] together ad-hoc solutions."[18]

The Commission could also consider a multi-year phase-in approach in which, prior to enforcement of the legacy MVPD obligations, the Commission pauses the phase-in to conduct a review of the state of competition in the OVD market. Based on the results of that review, the Commission would then make a renewed determination as to whether or which legacy MVPD obligations should apply to OVDs. This approach would allow the Commission a future opportunity to take new measurements of the rapidly growing and evolving OVD marketplace, and consider calibrating its regulatory framework based on what it finds.

The Commission took a similar tact in the March 2015 Open Internet Order when it exempted certain broadband providers from the newly-enacted transparency requirements. While the initial grant of the exemption was temporary, the Commission directed the Consumer & Governmental Affairs Bureau to conduct a proceeding to determine "whether to make the exception permanent."[19] The Commission could take a similar approach in this proceeding by establishing a phase-in approach for the MVPD obligations that requires the Commission to review and reconsider whether certain legacy obligations should apply to OVDs prior to application and enforcement.

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available here; *2012 IP-Video Captioning Order* ¶ 34 ("for a period of two years after this *Report and Order* is published in the Federal Register, [the Commission] will not require captioning of uncaptioned, archival IP-delivered programming that is already in the MVPD's library before it is shown on television with captions"); *ACS Accessibility Order* ¶¶ 106-07 (Order released by the FCC October 7, 2011 required that "covered entities must be in compliance with all the rules adopted herein" by October 8, 2013).

[18] *ACS Accessibility Order* ¶ 110.

[19] *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 24 (Mar. 12, 2015).

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Before moving forward, the Commission must first develop a more complete record of the technical challenges faced by OVDs in implementing the legacy FCC regulations applicable to MVPDs, and resolve pending and proposed proceedings that will impact MVPD obligations. If the FCC does move forward with a reclassification, YipTV urges that the Commission not require OVDs to automatically be reclassified as MVPDs – instead, such status should be optional. And if the Commission does not make MVPD status optional for OVDs, YipTV requests that the Commission not impose legacy FCC rules designed for MVPDs on OVDs. Rather, the Commission should exempt or waive these rule obligations for OVDs. At the very minimum, to the extent that an exemption or waiver of any such rules is not provided, then the Commission should phase-in the applicability of such obligations over a reasonable multi-year period of time (*i.e.*, not less than three years from the effective date of the change in the definition). Without such relief and additional consideration, the Commission endangers the very competition and consumer choice that the Commission is intending to support by this proposed change.

Respectfully submitted,

Monica S. Desai
Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, DC 20037
202-457-7535
Counsel to YipTV

cc:

Matthew Berry
Robin Colwell
Valery Galasso
Chanelle Hardy
Maria Kirby
Gigi Sohn
Nancy Murphy
Mary Beth Murphy
Steven Brockaert
Brendan Murray
Lyle Elder
Raphael Sznajder
Alison Neplokh